

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8934, 8935, 8937 and
8938 of 1989 and 2001 of 1995
Special Civil Applications No.1829, 3739 &
4250/87

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?
1 to 5 No

KAMBOL SEVA SAHAKARI MANDLI LTD

Versus

GENERAL INSURANCE CORPN OF INDIA

Appearance:

Special Civil Applications No.8934, 8935, 8937, 8938
of 1989 and 2001 of 1995

MR PM RAVAL, Sr.Advocate with Mr Harin Raval
for Petitioners

Mr RH Mehta, Advocate for respondent No.1

Mr PV NANAVATI for Respondent No. 2

Mr J M Thakore, Advocate General with Ms.Harsha
Devani, AGP for the State

Special Civil Applications No. 1829/87

Mr Mukesh Patel, Advocate for the petitioner

Mr Rajani H Mehta, Advocate for respondent No.1

Mr J M Thakore, Advocate General with Ms.Harsha
Devani, Advocate for the State

Mr J D Ajmera, Addl.Central Govt.Standing Counsel

for Respondent No.6

Special Civil Applications No.3739 & 4250/87

Mr B M Mangukia for Mr V H Patel, Advocates
for the petitioner

Mr R H Mehta, Advocate for respondent No.1

Mr J M Thakore, Advocate General with Ms.Harsha
Devani, AGP for the State

Mr J D Ajmera, Addl.Central Government Standing
Counsel for respondent No.6

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 21/09/96

ORAL JUDGEMENT

The common question of law and facts raised in this group of Special Civil Application is as to whether the respondents have failed to pay the amount of crop insurance because of the failure of crop during the Kharif season 1987-88. The Central Government, keeping in view the fact that the agriculture is fraught with uncertainties arising among others from natural calamities, drought, flood etc. which destroy the crop and affect the cultivators' capacity to repay the loans, introduced a comprehensive scheme for the crop insurance from the Kharif 1985. The scheme is known as "Comprehensive Crop Insurance Scheme, 1985" (hereinafter referred to as 'the scheme of 1985'). The scheme is being operated by the General Insurance Corporation. It has been discussed in detail in a judgment of this Court rendered in a group of Special Civil Applications being Special Civil Application No.1541/87 and allied matters decided on 7.8.1996. So far as the present controversy is concerned, suffice it to say that under the scheme, crops such as rice, wheat, millets, oilseeds, pulses etc. are covered. The scheme operates in defined areas as may be notified by the Union Ministry of Agriculture. A defined area may be a District, Tehsil/Taluka, Block or other similar contiguous areas. The nature of coverage is provided in para 7 of the scheme. It provides that if the actual average yield per hectare of the insured crop for the defined area are determined on the basis of crop cutting experiments in the insured season, falls short of the specified threshold yield all the insured farmers growing that crop in the defined area are deemed to have suffered shortfall in their respective yields and the scheme seeks to provide coverage against such

contingency. The method of calculation is provided in paras 10 and 11. It would be convenient to reproduce paras 7, 10 and 11 hereunder:

"7. Nature of coverage.

i) If the actual yield per hectare of the insured crop for the defined area determined on the basis of crop cutting experiments in the insured season, falls short of the specified threshold yield all the insured farmers growing crop in the defined area are deemed to have suffered short-fall in their respective yields and the scheme seeks to provide coverage against such contingency.

(ii) Where data of yields obtained through crop cutting are not available, the methodology for assessing the shortfall will be decided upon by GIC in consultation with the Union Ministry of Agriculture.

10. Basis of indemnity

If there is a shortfall in the actual average yield per hectare of the insured crop, each of the insured farmers growing crop in the defined area will be eligible for indemnity calculated as under:

Shortfall in yield* X Sum insured for the farmer

Threshold yield

*Threshold yield less the actual average for the defined area.

11. Threshold yield of a crop for 'defined area'

80% of the average yield per hectare of the crop for the 'defined area' during the last five years (or such shorter period as may be decided for specific defined area) for which data are available based on crop cutting experiments or such other alternative methodology as may be adopted.

Part XIV of the Scheme which provides for the PROGRAMME FOR DETERMINATION AND PAYMENT OF CLAIMS reads as under:

- i) Within one month after crop cutting experiments of each insured crop, the State Government shall furnish to GIC the data of yields for each defined area (together with causes of loss) where the average yield falls short of the threshold yield as per crop insurance policies issued by GIC.
- ii) On receipt of yield data from the State Government, GIC shall (a) identify the defined areas and crops for which claims become payable and (b) determine the amount of claim payable to each Bank in each such defined area.
- iii) GIC shall pay to Banks and designated nodal points of Commercial Banks directly its share of claim.
- iv) i Simultaneously GIC shall furnish full details and advise the State Crop Insurance Fund to enable the latter to settle its share of the claim.
- v) On receipt of claim remittance from GIC/State Crop Insurance Fund, the Bank concerned shall credit the claim amount of the loanee farmer concerned."

2. Thus, the method of calculation and the damages payable under the scheme is on the basis of crop cutting experiments which is carried out by the Director of Agriculture, Government of Gujarat is incharge of conducting the crop cutting experiment. The crop cutting experiments are carried out for the selected crops Talukawise by the office of the Director of Agriculture through the concerned Panchayats. Random sampling method is employed for the purpose of carrying out crop cutting experiments.

3. I have heard Mr P M Raval, learned Sr. Advocate and M/s. B M Mangukia and M I Patel, learned Advocates for the petitioners and learned Advocate General with Ms. Harsha Devani, learned AGP, Mr Rajani H Mehta and Mr P V Nanavati, learned Advocates for the respondents.

4. It is contended by the learned Advocates for the petitioners that the crop cutting method employed by the respondents to assess damages of the crop is far away from reality and has worked against the interest of the claimants. The scheme does not indicate as to how the

shortfall or the threshold yield shall be determined. It is submitted that under the Bombay Land Revenue Code and the Bombay Land Revenue Rules, a system is provided known as 'Annavari' to determine the damages of the crops. The learned Advocates submit that the Annavari system is more scientific. They have invited my attention to a table given in para 8 of the petition which indicates that in the notified areas for the crop Bajra, the threshold yield has been indicated as 692 kg/hectare, but for the year 1987, the actual yield has been shown as 1368 kg/hect. The learned Advocates have also invited my attention to a letter of the Collector, Banaskantha dated 12.10.1987 at Annexure 'F' to the petition wherein it is stated that all the villages of District Banaskantha were affected by drought conditions during the year 1987 and the crop in all the villages was below 50% of the normal yield. On these facts, the learned Counsel submitted that while as per the crop cutting system, the actual yield has been shown to be much above of threshold yield, the fact as is evident from the letter of the Collector is that there was drought in the said area. On the other hand, it is argued by the learned Advocate General, Mr J M Thakore, Mr R H Mehta and Mr P V Nanavati, learned Advocates for General Insurance Co. that the scheme of 1985 is a self-contained scheme which also contains provisions for determination of damages of the crop. Since the method has been provided under the scheme, it will not be for this Court to examine as to whether the Annavari system is more scientific or the system provided under the scheme. It is also contended that the petitions involve disputed questions of facts and it will not be appropriate for this Court to enter into the controversy under Article 226 of the Constitution. It is further pointed out that the method provided under the scheme of 1985 equally applies to all the claimants through out the country. According to the Annavari system under the Bombay Land Revenue Rules, in the State of Gujarat, the respondent General Insurance Corporation cannot adopt a different method for different districts/villages. It is further pointed out that the Annavari system applies to all villages and crops in general, but the crop cutting system applies to certain areas covered under the scheme in a defined area.

5. I have considered the rival contentions of the learned Advocates. It cannot be disputed that the method has been provided under the scheme of 1985 to determine the damages of the crop. This has been explained in the affidavit filed by Mr C M Leuva, Deputy Secretary, Agriculture. It has further been explained by Mr M C Majmudar, Assistant Director of Agriculture by way of

affidavit. Having read the affidavits, I am satisfied that the crop cutting method is scientific. It will not be for this Court to examine the Annavari system and the crop cutting system in detail. In fact, the purpose of Annavari system and the crop cutting system are different. Annavari system is basically for the system of remission in the revenue. It is a hard fact that various considerations prevail for determining damage of crop in Annavari system, and therefore, in the present context, the said system is wholly misplaced. The crop cutting method operates in the defined area through out the country and as such a uniform practice has been adopted. There are no allegations of malafides or arbitrariness, thus the matter calls for no interference by this Court in exercise of powers under Article 226 of the Constitution of India.

6. In view of the above, there is no merit in this group of Special Civil Application and as such the same is rejected. Rule in each of the petitions is discharged. No order as to costs.

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